



Reprinted
March 1, 2005

ENGROSSED HOUSE BILL No. 1004

DIGEST OF HB 1004 (Updated February 28, 2005 4:24 pm - DI 58)

Citations Affected: IC 6-8.1; noncode.

Synopsis: Tax amnesty program. Authorizes the department of state revenue to establish a tax amnesty program that provides for the waiver of unpaid interest, penalties, and fees upon payment of unpaid listed taxes during the amnesty period or in conformity with a payment plan established by the department. Provides that a riverboat gaming business may not use the amnesty program to avoid paying adjusted gross income taxes owed under a recent Indiana Supreme court decision. Doubles the penalty for a taxpayer that is eligible to participate in the amnesty program but fails to participate. Provides certain exceptions. Requires the department of state revenue to provide the legislative council with an assessment of the impact of the tax amnesty program on tax collections and an analysis of the costs of administering the tax amnesty program.

Effective: Upon passage.

Turner, McClain, Messer, Welch
(SENATE SPONSORS — KENLEY, CLARK)

January 4, 2005, read first time and referred to Committee on Ways and Means.
January 6, 2005, amended, reported — Do Pass.
January 10, 2005, read second time, amended, ordered engrossed.
January 11, 2005, engrossed. Read third time, passed. Yeas 61, nays 36.

SENATE ACTION

February 14, 2005, read first time and referred to Committee on Tax and Fiscal Policy.
February 15, 2005, amended, reported favorably — Do Pass.
February 28, 2005, read second time, amended, ordered engrossed.

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EH 1004—LS 7519/DI 51+



First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1004

A BILL FOR AN ACT to amend the Indiana Code concerning
taxation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 6-8.1-3-17 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17. (a) Before an
3 original tax appeal is filed with the tax court under IC 33-26, the
4 commissioner may settle any tax liability dispute if a substantial doubt
5 exists as to:
6 (1) the constitutionality of the tax under the Constitution of the
7 State of Indiana;
8 (2) the right to impose the tax;
9 (3) the correct amount of tax due;
10 (4) the collectibility of the tax; or
11 (5) whether the taxpayer is a resident or nonresident of Indiana.
12 (b) After an original tax appeal is filed with the tax court under
13 IC 33-26, and notwithstanding IC 4-6-2-11, the commissioner may
14 settle a tax liability dispute with an amount in contention of twenty-five
15 thousand dollars (\$25,000) or less. ~~(c)~~ Notwithstanding IC 6-8.1-7-1(a),
16 the terms of a settlement under **this** subsection ~~(b)~~ are available for
17 public inspection.

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(c) The department shall establish an amnesty program for taxpayers having an unpaid tax liability for a listed tax that was due and payable for a tax period ending before July 1, 2004. A taxpayer is not eligible for the amnesty program for any tax liability resulting from the taxpayer's failure to comply with IC 6-3-1-3.5(b)(3) with regard to the tax imposed by IC 4-33-13. The time in which a voluntary payment of tax liability may be made (or the taxpayer may enter into a payment program acceptable to the department for the payment of the unpaid listed taxes in full in the manner and time established in a written payment program agreement between the department and the taxpayer) under the amnesty program is limited to the period determined by the department, not to exceed eight (8) regular business weeks ending before the earlier of the date set by the department or July 1, 2006. The amnesty program must provide that, upon payment by a taxpayer to the department of all listed taxes due from the taxpayer for a tax period (or payment of the unpaid listed taxes in full in the manner and time established in a written payment program agreement between the department and the taxpayer), entry into an agreement that the taxpayer is not eligible for any other amnesty program that may be established and waives any part of interest and penalties on the same type of listed tax that is being granted amnesty in the current amnesty program, and compliance with all other amnesty conditions adopted under a rule of the department in effect on the date the voluntary payment is made, the department:

- (1) shall abate and not seek to collect any interest, penalties, collection fees, or costs that would otherwise be applicable;
- (2) shall release any liens imposed;
- (3) shall not seek civil or criminal prosecution against any individual or entity; and
- (4) shall not issue, or, if issued, shall withdraw, an assessment, a demand notice, or a warrant for payment under IC 6-8.1-5-3, IC 6-8.1-8-2, or another law against any individual or entity;

for listed taxes due from the taxpayer for the tax period for which amnesty has been granted to the taxpayer. Amnesty granted under this subsection is binding on the state and its agents. However, failure to pay to the department all listed taxes due for a tax period invalidates any amnesty granted under this subsection for that tax period. The department shall conduct an assessment of the impact of the tax amnesty program on tax collections and an analysis of

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the costs of administering the tax amnesty program. As soon as practicable after the end of the tax amnesty period, the department shall submit a copy of the assessment and analysis to the legislative council in an electronic format under IC 5-14-6. The department shall enforce an agreement with a taxpayer that prohibits the taxpayer from receiving amnesty in another amnesty program.

(d) For purposes of subsection (c), a liability for a listed tax is due and payable if:

(1) the department has issued:

(A) an assessment of the listed tax and demand for payment under IC 6-8.1-5-3; or

(B) a demand notice for payment of the listed tax under IC 6-8.1-8-2;

(2) the taxpayer has filed a return or an amended return in which the taxpayer has reported a liability for the listed tax; or

(3) the taxpayer has filed a written statement of liability for the listed tax in a form that is satisfactory to the department.

SECTION 2. IC 6-8.1-10-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on ~~his~~ **the person's** return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

(b) The interest for a failure described in subsection (a) is the adjusted rate established by the commissioner under subsection (c), from the due date for payment. The interest applies to:

(1) the full amount of the unpaid tax due if the person failed to file the return;

(2) the amount of the tax that is not paid, if the person filed the return but failed to pay the full amount of tax shown on the return;

or

(3) the amount of the deficiency.

(c) The commissioner shall establish an adjusted rate of interest for a failure described in subsection (a) and for an excess tax payment on or before November 1 of each year. For purposes of subsection (b), the adjusted rate of interest shall be the percentage rounded to the nearest whole number that equals two (2) percentage points above the average investment yield on state money for the state's previous fiscal year, excluding pension fund investments, as published in the auditor of state's comprehensive annual financial report. For purposes of IC 6-8.1-9-2(c), the adjusted rate of interest for an excess tax payment

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is the percentage rounded to the nearest whole number that equals the average investment yield on state money for the state's previous fiscal year, excluding pension fund investments, as published in the auditor of state's comprehensive annual financial report. The adjusted rates of interest established under this subsection shall take effect on January 1 of the immediately succeeding year.

(d) For purposes of this section, the filing of a substantially blank or unsigned return does not constitute a return.

(e) Except as provided by ~~IC 6-8.1-5-2(c)(2)~~, **IC 6-8.1-3-17(c) and IC 6-8.1-5-2**, the department may not waive the interest imposed under this section.

(f) Subsections (a) through (c) do not apply to a motor carrier fuel tax return.

SECTION 3. IC 6-8.1-10-12 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 12. (a) This section applies to a penalty related to a tax liability to the extent that the:**

- (1) tax liability is for a listed tax;
- (2) tax liability was due and payable, as determined under IC 6-8.1-3-17(d), for a tax period ending before July 1, 2004;
- (3) department establishes an amnesty program for the tax liability under IC 6-8.1-3-17(c);
- (4) individual or entity from which the tax liability is due was eligible to participate in the amnesty program described in subdivision (3); and
- (5) tax liability is not paid:
 - (A) in conformity with a payment program acceptable to the department that provides for payment of the unpaid listed taxes in full in the manner and time established in a written payment program agreement entered into between the department and the taxpayer under IC 6-8.1-3-17(c); or
 - (B) if clause (A) does not apply, before the end of the amnesty period established by the department.

(b) Subject to subsection (c), if a penalty is imposed or otherwise calculated under any combination of:

- (1) IC 6-8.1-1-8;
- (2) section 2.1 of this chapter;
- (3) section 3 of this chapter;
- (4) section 4 of this chapter;
- (5) section 5 of this chapter;
- (6) section 6 of this chapter;

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- (7) section 7 of this chapter;
- (8) section 9 of this chapter; or
- (9) IC 6-6;

an additional penalty is imposed under this section. The amount of the additional penalty imposed under this section is equal to the sum of the penalties imposed or otherwise calculated under the provisions listed in subdivisions (1) through (9).

(c) The additional penalty provided by subsection (b) does not apply if all of the following apply:

(1) The department imposes a penalty on a taxpayer or otherwise calculates the penalty under the provisions described in subsection (b)(1) through (b)(9).

(2) The taxpayer against whom the penalty is imposed:

(A) timely files an original tax appeal in the tax court under IC 6-8.1-5-1; and

(B) contests the department's imposition of the penalty or the tax on which the penalty is based.

(3) The taxpayer meets all other jurisdictional requirements to initiate the original tax appeal.

(4) Either the:

(A) tax court enjoins collection of the penalty or the tax on which the penalty is based under IC 33-26-6-2; or

(B) department consents to an injunction against collection of the penalty or tax without entry of an order by the tax court.

(d) The additional penalty provided by subsection (b) does not apply if the taxpayer:

(1) has a legitimate hold on making the payment as a result of an audit, bankruptcy, protest, taxpayer advocate action, or another reason permitted by the department;

(2) had established a payment plan with the department before the effective date of this section; or

(3) verifies with reasonable particularity that is satisfactory to the commissioner that the taxpayer did not ever receive notice of the outstanding tax liability.

SECTION 4. [EFFECTIVE UPON PASSAGE] The department of state revenue may adopt temporary rules in the manner provided by IC 4-22-2-37.1 for the adoption of emergency rules to carry out the amnesty program provided by IC 6-8.1-3-17(c), as amended by this act. A temporary rule adopted under this SECTION expires on the latest of the following:

(1) The date the temporary rule is superseded by another

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- 1 **temporary rule adopted under this SECTION.**
- 2 **(2) The date the temporary rule is superseded by a rule**
- 3 **adopted under IC 4-22-2.**
- 4 **(3) December 31, 2006.**
- 5 **SECTION 5. An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1004, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 2, delete "owing" and insert **"having an unpaid tax liability for"**.

Page 2, line 2, delete "tax." and insert **"tax that was due and payable for a taxable year ending before July 1, 2004. A taxpayer is not eligible for the amnesty program for any tax liability that has been reduced to a judgment against the taxpayer in an order issued by a trial court before the date the amnesty period begins."**

Page 2, line 3, after "made" insert **"(or the taxpayer may enter into a payment program acceptable to the department for the payment of the unpaid listed taxes in full in the manner and time established in a written payment program agreement between the department and the taxpayer)"**.

Page 2, line 9, after "year" insert **"(or payment of the unpaid listed taxes in full in the manner and time established in a written payment program agreement between the department and the taxpayer)"**.

Page 3, line 39, after ";" insert **"and"**.

Page 3, delete lines 40 through 42.

Page 4, line 1, delete "(6)" and insert **"(5)"**.

Page 4, line 1, delete "paid" and insert **"paid:**

(A) in conformity with a payment program acceptable to the department that provides for payment of the unpaid listed taxes in full in the manner and time established in a written payment program agreement entered into between the department and the taxpayer under IC 6-8.1-3-17(c); or

(B) if clause (A) does not apply,"

Page 4, line 3, delete "If" and insert **"Subject to subsection (c), if"**.

Page 4, between lines 17 and 18, begin a new paragraph and insert:

"(c) The additional penalty provided by subsection (b) does not apply if all of the following apply:

(1) The department imposes a penalty on a taxpayer or otherwise calculates the penalty under the provisions described in subsection (b)(1) through (b)(9).

(2) The taxpayer against whom the penalty is imposed:

(A) timely files an original tax appeal in the tax court under IC 6-8.1-5-1; and

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(B) contests the department's imposition of the penalty or the tax on which the penalty is based.

(3) The taxpayer meets all other jurisdictional requirements to initiate the original tax appeal.

(4) Either the:

(A) tax court enjoins collection of the penalty or the tax on which the penalty is based under IC 33-26-6-2; or

(B) department consents to an injunction against collection of the penalty or tax without entry of an order by the tax court.".

and when so amended that said bill do pass.

(Reference is to HB 1004 as introduced.)

ESPICH, Chair

Committee Vote: yeas 17, nays 7.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1004 be amended to read as follows:

Page 2, line 5, delete "that has been reduced to a judgment against the taxpayer" and insert **"for which the department has issued a final determination that has been affirmed in the case decided by the tax court and denied transfer to the state supreme court"**.

Page 2, line 6, delete "in an order issued by a trial court".

(Reference is to HB 1004 as printed January 7, 2005.)

TURNER

 HOUSE MOTION

Mr. Speaker: I move that House Bill 1004 be amended to read as follows:

Page 2, line 20, after "taxpayer)" insert **", entry into an agreement that the taxpayer is not eligible for any other amnesty program that may be established and waives any part of interest and penalties on the same type of listed tax that is being granted amnesty in the current amnesty program,"**.

Page 3, line 1, after "." insert **"The department shall enforce an agreement with a taxpayer that prohibits the taxpayer from receiving amnesty in another amnesty program."**

(Reference is to HB 1004 as printed January 7, 2005.)

WELCH

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SENATE MOTION

Madam President: I move that Senator Clark be added as cosponsor
of Engrossed House Bill 1004.

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COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred House Bill No. 1004, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 3, delete "taxable year" and insert "**tax period**".

Page 2, line 18, delete "taxable year" and insert "**tax period**".

Page 2, line 37, delete "taxable year" and insert "**tax period**".

Page 2, line 41, delete "taxable year" and insert "**tax period**".

Page 2, line 42, delete "taxable year." and insert "**tax period**".

Page 3, between lines 8 and 9, begin a new paragraph and insert:

"(d) For purposes of subsection (c), a liability for a listed tax is due and payable if:

(1) the department has issued:

(A) an assessment of the listed tax and demand for payment under IC 6-8.1-5-3; or

(B) a demand notice for payment of the listed tax under IC 6-8.1-8-2;

(2) the taxpayer has filed a return or an amended return in which the taxpayer has reported a liability for the listed tax; or

(3) the taxpayer has filed a written statement of liability for the listed tax in a form that is satisfactory to the department."

Page 4, line 9, after "payable" insert ", as determined under IC 6-8.1-3-17(d)".

Page 4, line 9, delete "taxable year" and insert "**tax period**".

Page 5, between lines 15 and 16, begin a new paragraph and insert:

"(d) The additional penalty provided by subsection (b) does not apply if the taxpayer:

(1) has a legitimate hold on making the payment as a result of an audit, bankruptcy, protest, taxpayer advocate action, or another reason permitted by the department; or

(2) had established a payment plan with the department before the effective date of this section."

and when so amended that said bill do pass.

(Reference is to HB 1004 as reprinted January 11, 2005.)

KENLEY, Chairperson

Committee Vote: Yeas 10, Nays 0.

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SENATE MOTION

Madam President: I move that Senator Clark be removed as cosponsor of Engrossed House Bill 1004.

CLARK

SENATE MOTION

Madam President: I move that Senator Clark be added as second sponsor of Engrossed House Bill 1004.

KENLEY

SENATE MOTION

Madam President: I move that Engrossed House Bill 1004 be amended to read as follows:

Page 2, delete line 5 and insert **"liability resulting from the taxpayer's failure to comply with IC 6-3-1-3.5(b)(3) with regard to the tax imposed by IC 4-33-13."**

Page 2, delete lines 6 through 7.

Page 2, line 8, delete "amnesty period begins."

Page 5, line 31, delete "or".

Page 5, line 33, delete "section." and insert **"section; or"**.

Page 5, between lines 33 and 34, begin a new line block indented and insert:

"(3) verifies with reasonable particularity that is satisfactory to the commissioner that the taxpayer did not ever receive notice of the outstanding tax liability."

(Reference is to EHB 1004 as printed February 16, 2005.)

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